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THE HONORABLE KAREN A. OVERSTREET  
Chapter 13

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

In re:

ALLEN G. WORKMAN  
SARAH Y. EVERT-WORKMAN aka  
SARAH EVERT,

Debtors.

ALLEN G WORKMAN  
SARAH Y. EVERT-WORKMAN aka  
SARAH EVERT,

Plaintiffs,

v.

LYDIAN PRIVATE BANK, dba VIRTUAL  
BANK

Defendant.

Case No. 11-15021

Adv. Pro. No.

**COMPLAINT TO STRIP JUNIOR  
MORTGAGE LIEN OF LYDIAN  
PRIVATE BANK, dba VIRTUAL BANK**

The Plaintiffs, debtors Allen G. Workman and Sarah Y. Evert -Workman, by and through attorney Dan A. LaMarche and the Law Offices of Jason S. Newcombe, allege and complain as follows:

**I. IDENTIFICATION OF PARTIES, JURISDICTION, AND VENUE**

1. Plaintiffs are the Debtors in the underlying bankruptcy case, and reside in Skagit County, Washington.

1           2.       Defendant is Lydian Private Bank, dba Virtual Bank (“Defendant”), who holds the  
2 second position deed of trust on Debtors’ property. Based on information and belief, Defendant  
3 is headquartered in Palm Beach Gardens, Florida.

4           3.       This is a core proceeding over which this Court has jurisdiction under 28 U.S.C. §  
5 157(a) and (b); and 28 U.S.C. § 1334(a).

6           4.       Venue is proper under 28 U.S.C. § 1409(a).

7  
8 **II.     FACTUAL ALLEGATIONS**

9           1.       Debtors filed a chapter 13 bankruptcy under 11 U.S.C in this Court on April 28,  
10 2011.

11           2.       Debtors are the owners of certain real property located at 4410 Bryce Drive,  
12 Anacortes, Washington 98221, which is their primary residence. Said property is  
13 also known by legal description as:  
14

15                   Lot 38, “SKYLINE NO. 4”, as per plat recorded in Volume 9  
16                   of Plats, pages 61 and 62, records of Skagit County,  
17                   Washington.

18           3.       The real property at 4410 Bryce Drive, Anacortes, Washington 98221 is listed in  
19 Schedule A of Debtors’ Chapter 13 bankruptcy petition with a value of \$264,500.00, based on a  
20 professional broker’s opinion of value.

21           4.       At the time of filing, Debtors owed the underlying first mortgage lienholder, Bank of  
22 America, N.A. as successor by merger to LaSalle Bank, N.A. as Trustee for Washington Mutual  
23 Pass Through Certificates WMALT series 2007-0A2., serviced by JP Morgan Chase Bank, N.A. ,  
24 approximately \$320,097.00 on its first position deed of trust secured by the real property described  
25 herein, loan ending 3062.  
26

5. At the time of filing, Debtors owed approximately \$34,643.00 to Defendant on loan ending 5809 with a second position deed of trust on the real property described herein.

### III. CAUSE OF ACTION

1. 11 U.S.C. §506(d) provides that to the extent a lien secures a claim against the Debtors that is not an allowed secured claim, then the lien is void. Based on the facts herein, the \$34,643.00 loan ending 5809 owed to Defendant is a fully unsecured debt not subject to 11 U.S.C. § 1322(b), and the lien is subject to avoidance pursuant to 11 U.S.C. §506(d). (*See Nobelman v. American Savings Bank*, 508 U.S. 324 (U.S. 1993)).

#### IV. PRAYER

WHEREFORE, Plaintiffs/Debtors respectfully request as follows:

1. The entry of an Order determining that the debt owed to Defendant Lydian Private Bank, dba Virtual Bank is wholly unsecured, pursuant to 11 U.S.C. §506(d), and providing that the Defendant's claim be treated as an allowed, unsecured claim.

2. For an Order removing the lien of Defendant Lydian Private Bank, dba Virtual Bank from the title to the described property upon the successful discharge of the Debtors.

3. For such further relief as the Court deems equitable and just.

DATED this 29th day of July, 2011.

Law Offices of Jason S. Newcombe

/s/ *Dan A. LaMarche*

Dan A. LaMarche, WSBA No.41087  
Attorney for Debtors